

No. 9(1)-81-8Lab./6880.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Sovrin Knit Works, Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 136 of 179

between

SHRI SINGH RAJ WORKMAN AND THE MANAGEMENT OF M/S SOVRIN KNIT WORKS, MATHURA ROAD, FARIDABAD

Present :—

Shri S. R. Gupta for the workman.

Shri S. L. Gupta for the management.

AWARD

By order No. ID/FD/14-79/16432, dated 16th April, 1979 the Governor of Haryana referred the following dispute between the management of M/s Sovrin Knit Works, Mathura Road, Faridabad and its workman Shri Singh Raj, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Singh Raj was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed on 26th July, 1979 and 31st August, 1979 as follows :—

1. Whether termination of services of the workman was justified and in order ?
2. Relief ?
3. Whether the workman is gainfully employed ? If so, to what effect ?

And the case was fixed for the evidence of the management who examined Shri Mohinder Singh as MW-1 and Shri O. P. Yadav as MW-2 and closed its case. Then the case was fixed for the evidence of the workman, who examined Shri Darshan Lal as WW-1 and himself as WW-2 and closed his case. Arguments were heard. Now I give my finding issues-wise :—

Issue No. 1.—MW-1 stated that the concerned workman was working in packing department. On 28th November, 1978 the Security Officer came to him and told that two pieces of cloth were recovered from the concerned workman. His report is Exhibit M-1 and Exhibit M-2 were the pieces of cloth. The workman was interrogated but he did not reply satisfactorily. Exhibit M-3 show cause notice was issued to the workman and police was informed,—vide Exhibit M-4. The workman replied,—vide Exhibit M-5 and admitted his fault. His services were terminated,—vide Exhibit M-6. The letter was sent by post. Exhibit M-7 was postal receipt. It was received back under-delivered and was Exhibit M-8. In cross-examination he stated that the workman had 8-9

years service and there was no complaint against him. At the time the Security Officer informed him there was none along with except the concerned workman. He admitted it that the pieces were not sealed or signed by the Security Officer. He denied the suggestion that the reply of the concerned workman was the same as given in Exhibit M-5, when he was brought to him. He admitted it correct that no enquiry was held into the charge-sheet. He denied that the pieces of cloth were not the same as at that time two small pieces like handkerchieves with which the workman was cleaning his hands with him. He further replied that Exhibit M-8 was sent at the address supplied by the workman. MW-2 stated that on 28th November, 1978 at 4-30 p.m. at the time of close of the shift two pieces of cloth were recovered from the concerned workman. He could not say if Exhibit M-2 were the same pieces because all the pieces were alike and it was a matter two years old. He further stated that he produced the workman before the Manager along with his report Exhibit M-1. In cross-examination he replied that no workman was made a witness of the recovery. Report Exhibit M-1 he had written prior to going to the Manager. He did not know if the workman had given an explanation to the management that he had taken two pieces for cleaning his hands and he was informed about illness of his mother, therefore, he forgot to put back the pieces.

WW-1 stated that he knew the workman. About 2½ years back workman had come to the factory gate with a small piece of cloth cleaning his hands and the workman handed over the same to the Security Guard stating that he brought it by mistake. He further stated that pieces of cloth Exhibit M-2 were not the same. In cross-examination he stated that the pieces of cloth were given to Shri Om Parkash the Security Guard by the workman and he was permitted to go out and he went away. There was no other happening regarding this matter at the gate. The concerned workman was ahead of him when he reached the factory gate. He denied the suggestion that the concerned workman was interrogated by the Manager after the incident. WW-2 the concerned workman stated that he never took pieces of cloth Exhibit M-2 and caught by the Security Guard. He further stated that about two years back he was cleaning his hands with a small piece of cloth when he was informed about the serious illness of his mother. While cleaning his hands he started for the factory gate. That soiled piece of cloth was given to the Security Guard and he went away. He received Exhibit M-3 after 2-3 days of incident and replied the same,—vide Exhibit W-1. He was not offered letter Exhibit M-8 for delivery. In cross-examination he stated that he was cleaning his hands with that piece of cloth in the latrine. He handed it over to the Security Guard of his own as it was in his hand. There was only one piece of cloth.

The learned representative for the management argued that the workman was caught by the Security Officer with two pieces of cloth and the case was of theft. The workman admitted his guilt according to Exhibit M-5, therefore, it was unnecessary to hold a proper domestic enquiry because admission is the best evidence. He further contended that the workman in his statement says that there was only one piece whereas in Exhibit M-5 his explanation he admits that there were two small pieces of cloth. The explanation is dated 2nd November, 1978 in Hindi and signed by the workman. He has admitted his explanation.

The learned representative for the workman had laid stress that no enquiry was held, therefore, his termination is illegal and amount to retrenchment.

I have gone through the demand notice in which the workman has given cause of his termination as victimisation whereas in his statement as WW-2 he had not stated a word on this plea. WW-1 states that he handed over the pieces of cloth to the Security Guard and went away. He was never interrogated by the management whereas MW-2 the Security Officer who caught hold of the workman and no question was put to him and that it was the Security Guard to whom the workman handed over the pieces of cloth. He had also stated that the workman was never interrogated by the Manager after the incident. Thus the presence of this witness is doubted at the time of incident. As regards

holding of enquiry I do not find any justification when recovery is admitted by the delinquent in his explanation. Pieces of cloth Exhibit M-2 are quite new and not soiled one as stated the by workman. Charge of theft is considered to be a serious misconduct. There is nothing to show the victimisation as alleged by the workman in his demand notice, therefore, this issue is decided in favour of the management.

Issue No. 3.—There is no evidence on file on this issue, therefore, it is decided against the management.

Issue No. 2.—The workman is not entitled to any relief.

While answering the reference, I give my award that the termination of services of the workman was justified and in order. The workman is not entitled to any relief. I order accordingly.

Dated the 27th May, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 527, dated the 29th May, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

The 29th June, 1981

No. 9(1)81-8Lab./7263.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Deepak Tools Pvt. Ltd., Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 201 of 1976

between

SHRI NATHU SINGH, WORKMAN AND THE MANAGEMENT OF M/S DEEPAK
TOOLS PRIVATE LTD., MATHURA ROAD, FARIDABAD

Present :—

Shri R. N. Roy, for the workman.

Shri D. R. Mahajan, for the management.

AWARD

By order No. ID/FD/1073-A-76/34606, dated 21st September, 1976 the Governor of Haryana referred the following dispute between the management of M/s

Deepak Tools Private Ltd., Mathura Road, Faridabad and its workman Shri Nathu Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Nathu Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 4th May, 1977 :—

- (1) Whether the workman served the management with a demand notice properly ? If not, to what effect ?
- (2) Whether the workman lost his lien by absenting himself for 10 consecutive days as per Model Standing Order ?
- (3) Whether the termination of services of the workman concerned was justified and in order ? If not, to what relief is he entitled ?

An *ex parte* award was passed by my predecessor on 28th July, 1979 and the same was set aside,—*vide* order, dated 28th January, 1980 and evidence of the management was recorded who produced Shri Deepak Mahajan, Managing Director as MW-1. On behalf of the workman he appeared himself as WW-1 and closed his case. The workman denied his signatures on payment of wages register. The management was given an opportunity to examine hand writing experts who produced Shri Veer. K. Sakhuja as MW-2. The workman was given a chance in rebuttal, but did not produce any evidence. Arguments were heard. Now I give my finding issueswise :—

Issue No. 1.—The concerned workman proved his demand notice Exhibit W-1 and stated in a statement recorded on 27th March, 1978 that he submitted the demand notice at the time of conciliation. The management did not lead any evidence in rebuttal on this issue, nor press the issue at the time of arguments, therefore, it is decided in favour of the workman.

Issue No. 2.—MW-1 stated that the workman joined service,—*vide* appointment letter Exhibit M-1. According to the attendance register brought by him the workman went on leave from 16th June, 1976 to 21st June, 1976. He was absent from 22nd June, 1976 to 27th June, 1976. He was absent on duty from 28th June, 1976 to 1st July, 1976 and was again absent from 2nd July, 1976 to 26th July, 1976. Thereafter his name was removed. Letter Exhibit M-2 and M-3 were sent to him under U.P.C. receipt Exhibit M-4 and M-5. He further stated that the workman never reported for duty thereafter. In cross-examination he stated that no other letter was written to the workman, nor he was given any chargesheet. Register was maintained by the Cashier or the Storekeeper. There was no entry in the register in the hand of the witness, though his initials were in the register. It was checked by the Labour Inspector and Factory Inspector. He further replied that no dismissal letter was sent to the workman.

WW-1 stated that his services were terminated on 2nd July, 1976 without any notice. In cross-examination he admitted his address on Exhibit W-2 as correct. He also admitted his signatures on Exhibit M-1 and also admitted his address given on Exhibit M-1 as correct. He denied that he went on leave from 16th June, 1976 or was absent from duty. He denied having received wages and his signatures in the wages register for the month of May, 1976. He admitted his signatures on Exhibit M-6 and M-7 but denied having received Rs. 250 as advance in the month of June, 1976 and having signed document mark D.

MW-2 stated that he was documents expert for the last 28 years. He examined signature at mark A on salary register for the month of May, 1976, at mark B on Exhibit M-6 for April, 1976 and signatures at mark C on salary payment register on Exhibit M-7 and also signature at mark B on the advance voucher Exhibit M-1. He compared the specimen signatures given by Shri Nathu Singh on Exhibit M-X and signatures affixed by him on the letter of authority in favour of Shri B. S. Yadav and signatures given in the Court on 3rd July, 1979 and also on demand notice as well on the form seeking employment. He further stated that he was of the considered and quite positive opinion that the signatures A, B, C and D in dispute were in the hand writing of the person who affixed comparative signatures to the documents referred in Exhibit M-1 under the heading "comparative signatures". His report was Exhibit M-Y. I find from document mark D that Shri Nathu Singh took an advance of Rs. 250 while proceeding on leave. It is dated 15th June, 1976. These signatures were proved by MW-2. The workman denied in his statement having proceeded on leave which fact is belied by this document. According to MW-1 and attendance register the workman was absent from 2nd July, 1976 to 26th July, 1976 when his name was removed. The version of the management is corroborated by letters Exhibit M-2 and M-3. The address on the photo copies Exhibit M-4 and M-5 is admitted as correct by the concerned workman. It is the same which is given in Exhibit M-1 employment letter of the workman. On this overwhelming evidence I hold that the workman lost his lien by absenting himself for more than 10 consecutive days. The contention of the learned representative for the workman that the action of the management amounted to termination and retrenchment has no force.

Issue No. 3.—In issue No. 2 it has been held that the workman lost his lien by absenting himself for more than 10 consecutive days, therefore, there was no question of termination of his services by the management and no separate decision is needed on this issue.

While answering the reference, I give my award that the workman lost his lien by absenting himself for more than 10 consecutive days. The workman is not entitled to any relief.

Dated the 11th June, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 565, dated the 13th June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 7th July, 1981

No. 9(1)81-8Lab/7401.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Nibro Ltd., Gurgaon.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 128 of 1979

Between

SHRI LAKHPAT RAM WORKMAN AND THE MANAGEMENT OF M/S
NIBRO LTD., GURGAON.

Present :

Shri Darshan Singh for the workman.
Shri M.P. Gupta for the management.

AWARD

By order No. ID/GG/12-79/16302, dated 13th April, 1979, the Governor of Haryana referred the following dispute between the management of M/s Nibro Ltd., Gurgaon and its workman Shri Lakhpat Ram to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Lakhpat Ram was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed on 31st December, 1979 :—

- (1) Whether the workman is estopped from rising the dispute ?
- (2) Whether the management has discharged the workman simplicitor and they were within their jurisdiction to do that ?
- (3) Whether termination of service of the workman was justified and in order ?
- (4) Whether the reference is bad in law ?
- (5) Relief.

And the case was fixed for the evidence of the management who examined Shri Rattan Lal Clerk office of the Labour Officer, Gurgaon as MW-1. Shri G.R. Chadha as MW-2, Shri Hoshier Singh as MW-3, Shri D.A. Philips as MW-4, Shri Puran Lal, Record Keeper, office of the Excise and Taxation Officer, Gurgaon as MW-5, Shri Balbir Singh, Record Keeper, office of the Deputy Commissioner, Gurgaon as MW-6, Shri M.M. Malik as MW-7 and closed its case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and Shri Ram Ashish a co-workman as WW-2 and closed his case. Arguments were heard. Now I give my finding issuewise :—

Issues No. 1 and 4.—The objection taken by the management in the written statement that there was a settlement dated 21st February, 1979 with the workman under section 12(3) that the case of the concerned workman will not be supported by other workmen and under clause 2 of the settlement he was estopped from rising the dispute. This settlement is not signed by the concerned workman.

This is a case under section 2-A of the Industrial Disputes Act which provides as under :—

“Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute”.

Enacting this section an individual workman whose services were terminated could seek relief without his cause being espoused by his co-workmen, therefore, there is no infirmity in the reference, nor the workman is estopped from raising the dispute.

Issues No. 2 and 3.—These issues are inter-related, therefore, are taken together. It is the case of the management that the services of the workman were terminated without giving any charge-sheet on the ground that he was riotous, mischievous and indulging in

provocating the workmen. He delivered defamatory speech against the management. The management felt that it was likely to jeopardise the safety and security of the company in keeping the workman in service, whereas the contention of the workman is that he was victimised being active leader of the union and his termination was illegal, unjustified and against the principles of natural justice. MW-2 produced Ex. MW-2/1 and MW-2/2 being speech delivered by the concerned workman at the factory gate and noted down by the witness. MW-3 produced Ex. MW-3/1 recorded by him from the speech of the concerned workman. MW-4 stated that the concerned workman was responsible for strike in the factory. He had instigated the workmen to gherao the Manager. He was also intimidated by the workman who was suspended, — vide Ex. MW-4/1. Reply of the workman was Ex. MW-4/2. He was charge-sheeted, — vide Ex. MW-4/3 and reply to the charge-sheet was received, — vide Ex. MW-4/4. Another letter given to the workman was Ex. MW-4/5 and copy of complaint filed in the Court was Ex. MW-4/6. Ex. MW-4/7 was the copy of his statement given in the court. He further stated that he did not pursue the court case. Ex. MW-4/9 was copy of compromise and Ex. MW-4/10 was report of Security Chowkidar. He further stated that the workman made derogatory remarks against the officers of the company. In cross-examination he stated that he did not know about the charges leading to dismissal. He further stated that no action on charge-sheet was taken and there was no complaint in writing about nuisance against the workman. He admitted that the workman was President of workers union and representing the demands of the workmen before the management. He denied the suggestion that he did not pursue the defamation case because he had no proof of the charges. MW-7 stated that the concerned workman instigated the workman against the management. On 1st December, 1978 at his instigation the workmen entered factory office and some of them assaulted him for which FIR No. MW-4/1 was lodged. He further stated that the workman used to hold gate meetings and makes speeches there. He further stated that he had placed case of the workman before the General Manager who passed discharge order Ex. MW-4/2. In cross-examination he stated that he did not recollect if he had examined the record of the concerned workman when he took charge as Works Manager. He further replied that he could not produce the report on the basis of which the workman was dismissed.

WW-1 the concerned workman stated that he joined service on 10th March, 1969 and was terminated on 21st December, 1978, — vide Ex. W-1. No enquiry was held against him. At the time of his termination there was a dispute about demands of the workmen. He was President of the union at that time. He held gate meetings. At that time there was lockout in the factory. He further stated that he never abused anybody, nor assaulted. He was never arrested by the police. WW-2 stated that he knew the concerned workman who was President of the union. In the year 1978 there was a dispute about the demands of the workmen. The concerned workman used to hold gate meetings at the factory gate. The management had declared a lockout. The workman used to represent other workmen in the redressal of their demands before the management. He never instigated the workmen to gherao or to put the factory under loss. In cross-examination he stated that his duty was in the tool room and he was a junior of the concerned workman. He denied that there was any assault at the factory gate on 2nd December, 1978. He also denied that the concerned workman was involved in that incident. He further replied that the lockout was declared by the management and the factory was opened by it. No payment of wages was made for the lockout period.

I find from the record that the workman was placed under suspension with effect from 14th March, 1977, — vide letter Ex. MW-4/1 pending enquiry. It is as under :—

“It has been reported that on 10th February, 1977, you indulged in certain acts which were calculated to bring the company into disrepute and to damage its good name and reputation. In view of the grave nature of the charges, it has been decided to place you under suspension with immediate effect pending an enquiry.”

A formal statement of charges will follow.

The workman replied the same,— *vide* Ex. MW-4/2 stating that the allegations were baseless and the management was fabricating charges against him because he was President of the union. Charge-sheet Ex. MW-4/3 was issued containing the following two charges :—

- (1) Illegal detention of company's property on the main Delhi Gurgaon Road with malicious intent.
- (2) Act of malicious propaganda prejudicial to the good name and reputation of the company by making false, fictitious and slanderous complaint to the excise and taxation office, Gurgaon.

The charges were denied by the workman in his reply Ex. MW-4/4. It is a common case of the parties that no enquiry was held into the charges levelled against the workmen and he was dismissed, *vide* Ex. W-1 dated 21st December, 1978 which is in the following terms :—

"We regret to inform you that since your retention in the service of the company is likely to jeopardise the safety and security of the establishment, it has been decided to terminate your services by way of discharge simpliciter. Your services are hereby terminated with immediate effect. You will be paid one month's wages in lieu of notice as per the relevant provision under clause 17(1) of the Certified Standing Orders of the Company."

The clause runs thus ; "Where it becomes necessary to terminate the services of a permanent workman due to reasons to be recorded in writing, such reasons being reason other than misconduct, retrenchment or closure, such as his being declared by the Government as a traitor or a person likely to jeopardise the safety of the establishment and subject to the provisions of the Employees State Insurance Act and Workmen's Compensation Act of the workman who develop serious defect in the eye-sight or hearing or mental deficiency, one month's notice in writing shall be given by the management or salary in lieu thereof to the workman concerned."

According to the certified standing orders a major misdemeanour for which the workman is liable to dismissal or discharge is given in clause 25 sub-clause (2). The allegations against the workman in the charge-sheet find place in clause number 25 (2) (1), (XVII), (XXII), (XXXXKII) and (XXXIV) for which punishment provided in the Standing Orders is dismissal in sub-clause (3). In the sub-clause (4) it is provided that the services of the workman shall not be terminated on the ground of misconduct unless he had been adjudged guilty of misconduct after a domestic enquiry held in the manner prescribed in the clause. I find that clause 17(1) is a sort of residual clause because it speaks of declaring a person as traitor by the Government or there may be such other defect such as eye sight, hearing or mental. I do not find that this clause could be invoked in the present case, where the management had suspended the workman pending domestic enquiry and had issued a charge-sheet according to the Certified Standing Orders. If the plea of the management to invoke the above clause is accepted it will be always like giving the dog a bad name and killing him.

The workman concerned was in the employment from 1969 and I find his termination as unjustified being against the principles of natural justice without following the procedure laid down in the Certified Standing Orders of the management. It further amounts to retrenchment as held by their Lordships of the Supreme Court in their verdict given in *Santosh Gupta versus State Bank of Patiala* and reported in 1980 II LLJ at page 72. I, therefore, decide both the issues against the management.

5. *Relief*.—While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages.

Dated 11th June, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 584, dated 19th June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9/(1)81-8Lab/7402.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Bandu Machinery Pvt. Ltd., Industrial Area, Gurgaon.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 127 of 1979

between

SHRI MADAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. BANDU MACHINERY PVT. LTD. INDUSTRIAL AREA, GURGAON

Present.—

Shri R. N. Roy, for the workman.

Shri A. D. Kolhatkar, for the management.

AWARD

By order No. ID!GG!5-79!16308 dated 13th April, 1979 the Governor of Haryana referred the following dispute between the management of M/s. Bandu Machinery Pvt Ltd., Industrial Area, Gurgaon and its workman Shri Madan Lal to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Madan Lal was justified and in order?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 12th July, 1979:—

- (1) Whether the management had a right to discharge the workman simpliciter on the ground mentioned in para No. 5 of the W.S. ?
- (2) Whether the workman gave any false information? If so, with what effect?
- (3) If issues No. 1 and 2 were not found in favour of the management whether the termination of services of the workman was justified and in order ?
If not to what relief is the workman entitled ?

And the case was fixed for the evidence of the management, who examined Shri Anant P. Dehadrai as MW-1, Shri Om Parkash as MW-2 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed

his case. Then the case was fixed for arguments. Arguments were heard. I now give my findings issueswise:—

Issue No. 1.—MW-1 stated that the concerned workman was an employee of the management. Ex. M-1 was his letter of appointment. He was interviewed on 1st April, 1976. His application of appointment was REx. M-2. In his application he had stated that he passed Matriculation examination. His age was given as 19 years. The Provident Fund was made applicable to the company in October, 1978 and it was disclosed that there was something fishy about the age of the workman so he was asked to bring school leaving certificate which was Ex. M-3. The workman had given an application copy Ex. M-4 for appearing in Matriculation examination. His date of birth was 20th January, 1959. Ex. M-5 was copy of the Standing Orders. After this enquiry he was discharged simplicitor copy of conciliation report was Ex. M-6 and letter of discharge Ex. M-7. In cross-examination he stated that he had not brought the provident fund nomination form of the workman. He was employed as a helper. He was promoted as plainerman. At the time of appointment the workman was believed and no verification of his date of birth was done. No charge-sheet was issued to the workman, nor any domestic enquiry was held. MW-2 corroborated the statement of MW-1.

W-1 stated that he worked with the management for 2½ years. His services were terminated in November 1978. No notice pay or retrenchment compensation was given to him. He further stated that he did not give his age in Ex. M-2. He admitted his signature on it. He further stated that he was not asked about his age at the time of interview. He had filled in ESI form and written his age on it as 18 years. At the time of entry into service his age was 17 years. In cross-examination he denied that at the time of interview he had given his age as 19 years and 2nd division Matriculation. He admitted that the management had asked him to submit school certificate at the time of his termination of his service. He admitted his signatures on appointment letter and knew about condition number 9.

The learned representative for the management argued that the workman was bound by contract of service and condition number 9 of his appointment letter Ex. M-1. He further argued that he was only 17 years of age at the time of entry into service and gave deliberately false information about his passing Matriculation examination. He argued that the management could take action under the contract of employment and had a right to discharge the workman simplicitor. On the other hand the learned representative for the workman argued that at the time of termination of services of the workman he was 19 years of age and had put in more than two years of service and his termination was bad for not following the procedure laid down in the Certified Standing Orders and the action amounted to retrenchment. He cited 1980 II LLJ, page 72.

I have gone through the termination letter Ex. M-7 which is as under:—

“Management regrets to inform you that your services are no longer required with effect from 13th November, 1978.

You are advised to collect your dues if any from accounts.” I have also seen certified standing Orders Ex. M-5 which were certified on 18th December, 1976. According to clause XXXXII giving false information regarding his name, age, father's name, qualification or previous service or any other personal data at the time of employment or thereafter was a major misconduct for which maximum penalty was dismissal according to clause 30. The procedure is laid down in clauses 31 and 32 which state that the services of a workman shall not be terminated on the ground of misconduct unless he had been adjudged guilty after domestic enquiry held in the manner prescribed. It is admitted fact that no charge-sheet was given to the workman nor any domestic enquiry was held. As regards the contention of the management that the standing orders came into force after the appointment of the concerned workman and he was only governed by condition of service laid down in his appointment letter has no force because certified standing orders have statutory force and are applicable

to the management and employees irrespective of their date of appointment. In the circumstances, action of the management in terminating the services of the workman on the ground mentioned in the written statement is against the standing orders.

As regards the contention that the order of discharge Ex. M-7 is a discharge simpliciter and it does not speak of any misconduct. It is observed that this action cannot stand in law because the workman had put in more than two years of service and such action of the management amounts to retrenchment as given in section 2 (00) of the I.D. Act. There is no evidence to prove compliance of section 25 (FF) in case the case falls under this clause. The verdict of their Lordships of the Supreme Court given in *Santosh Gupta V/s. State Bank of Patiala* 1980 II LLJ page 72 is fully applicable to the case. This issue is, therefore, decided against the management.

Issue No. 2.—It is into evidence that the workman joined service by making application Ex. M-2 in which he has stated having passed Matriculation examination from Haryana Board. This fact is belied by his school leaving certificate Ex M-3 and even by his admission that he had taken leave from the management for appearing in supplementary examination of Matriculation. As regards the age it does not find mention in Ex. W-2, however, it is written as 19 years by the person who interviewed the concerned workman. Thus he gave false information to the management at the time of his submission of his application for appointment. As regards the effect of this information I have already discussed this point in the above issue that the management had to proceed according to Certified Standing Orders. This issue is decided accordingly.

Issue No. 3.—As issue No. 1 has been decided against the management therefore no separate decision is necessary on this issue.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated 20th June, 1981

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 594, dated 23rd June, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Dispute Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 9(1)81-8Lab/7405.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Bhai Sunder Dass & Sons Pvt. Ltd., Mathura Road, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 337 of 1979

between

SHRI RANJEET SINGH, WORKMAN AND THE MANAGEMENT OF M/S BHAI
SUNDER DASS & SONS CO., PRIVATE LIMITED, MATHURA ROAD, FARIDABAD

Present:—

Shri Chaman Lal Oberoi, for the workman.
Shri R.G. Sharma, for the management.

AWARD

By order No. FD/87-79/44865, dated 22nd October, 1979, the Governor of Haryana referred the following dispute between the management of M/s. Bhai Sunder Dass and Sons Co., Private Ltd., Mathura Road, Faridabad and its workman Shri Ranjeet Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ranjeet Singh was justified and in order ? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 31st December, 1979:—

1. Whether the domestic enquiry is fair and proper?
2. If issue No. 1 is not proved, whether the termination of services of the workman was justified and in order?
3. Relief.

Issue No. 1.—was treated as preliminary and after recording evidence on this issue it was decided against the management by my predecessor,—*vide* his order dated 8th April, 1980. The management adduced evidence on other issues and produced Shri Madan Lal as MW-1, Shri Ramayan Mishra Time Keeper as MW-2 and Shri Satya Paul Draftsman as MW-3 and closed its case. Then the case was fixed for the evidence of the workman who examined Shri Ranjeet Singh as WW-1, Shri Sumer Singh as WW-2, Shri Sukh Dev as WW-3, Shri Nathili as WW-4, Shri Ram Lal as WW-5 and closed its case. Arguments heard. I now give my finding issuewise:—

Issue No. 2. —M.M.-1 stated that on 31st June, 1979 there was a quarrel between Shri Ranjeet Singh and Raksh Paul. Shri Ranjeet Singh gave a fist blow to Shri Raksh Paul his causing nose bleeding. His shirt was soiled with the blood. In cross examination he stated that there were other workmen also present at that time but he could not give their names. He further stated that Shri Raksh Paul was not in the service of the management now. He denied the suggestion that there was no quarrel and he was making false statement. M.W. 2 stated that Ex. W-4 bear the signature of Shri Sadiki the then Factory Manager. Ex. W-7 also bear this signature. He was not in the employment of the management these days. Ex. MW-2/1 was copy of form 2 under Factories Act. Ex. MW-2/2 was the copy of Standing Orders. Ex. M.W. 2/3 was copy of the notice given to different authorities. He further stated that on 31st May, 1979 there was a quarrel between Shri Ranjeet Singh and Shri Raksh Paul. He did not witness the quarrel but Shri Raksh Paul had come to him weeping. His shirt was in torn condition. He had told that he was beaten by Shri Ranjeet Singh. He had made an application in this behalf which was Ex. M-11. A letter from Shri Chaman Lal Oberoi was received which was Ex. MW-2/4. Shri Madan Lal had given in writing about the incident which was Ex. MW-2/5. Shri Ranjeet Singh did not give any complaint about the incident. In cross examination he stated that the matter was not reported to the police. He was present that the time of giving documents Ex. M.W. -2/1 to Ex. M.W. -2/5 to the Manager who handed over the same to him. He denied the suggestions that Ex. M.W.-2/4 concerned some other Ranjeet Singh. He admitted that other Ranjeet Singh was the President of the union. He further replied that Shri Raksh Paul had given in writing Ex. W-2 on 2nd June, 1979. He denied the suggestion that Shri Ranjeet Singh was implicated falsely on the ground of his union activities. M.W. 3 stated that from 13th July, 1978 to 13th November, 1979 he was in the employment of the management. He had witnessed the quarrel between Shri Ranjeet Singh and Shri Raksh

Paul. The incident took place on 31st May, 1979 at 11-00 A.M. When he reached there Shri Ranjeet Singh was giving fist blows to Shri Raksh Paul whose nose was bleeding. He tried to save him but Shri Ranjeet Singh was giving him blows and had threatened to kill him. He did not know the reason of the quarrel. The clothes of Shri Raksh Paul were in torn condition. He was given first aid by Shri Upadhyay in the time office. In cross-examination he stated that he was in the employment of M/s. J.M.A. Industries these days. He had appeared in the domestic enquiry. He denied the suggestion that there was no quarrel between Shri Ranjeet Singh and Shri Raksh Paul and he was deposing because of promise for bonus by the management. In fact he never received bonus for that period. He further stated that at time there were about 32 workers in the machine shop. Shri Raju and Shri Rajinder Accounts Clerk were present at that time.

W.W.1 the concerned workman stated that he was working in the factory for 18-19 years as Fitter. Charge sheet was issued to him and he was suspended. No quarrel ever took place with Shri Raksh Paul. The management was annoyed with him because he was a union activist and for that reason his services were terminated. In cross examination he stated that he did not tell Shri Chaman Lal about the quarrel with Shri Raksh Paul. Ex. MW-2/4 was not written at his instance. He did not know the name of the union. The Secretary of the union was Shri Sita Ram and Shri Zile Singh was the President. WW-2 stated that no quarrel ever took place between Shri Ranjeet Singh and Shri Raksh Paul. In cross-examination he stated that Shri Ram Singh worked in machine shop. He was working about 20 yards from him on that day. He did not know about the alleged quarrel. W.W.-3 stated that Shri Ranjeet Singh was chargesheeted on 31st May, 1979 but there was no quarrel with any body on that day. In cross examination he stated that he know Shri Ranjeet Singh because he was his co-worker. WW:-4 stated that he know Shri Ranjeet Singh and Shri Raksh Paul but there was no quarrel between them on 31st May, 1979. W.W.-5 stated that he knew Shri Ranjeet Singh. He was chargesheeted on 31st May, 1979 on the allegation of a quarrel but there was no quarrel on that day. In cross examination he stated that he never heard about the quarrel.

I have gone through the documents placed on the file and find document Ex. M-11 signed by Shri Raksh Paul on 31st May, 1979 in which he has alleged the incident regarding giving him blows by the concerned workman and bleeding of his nose and intimidation etc. Both the workmen were placed under suspension for the disorderly behaviour,—vide Ex. W-4. Ex-2/4 is a letter from Shri Chaman Lal Oberoi, Legal Secretary of the union stating that there had been a compromise between Shri Ranjeet Singh and Shri Rakesh Paul. The management has examined witnesses who deposed about the incident of assault and intimidation from the concerned workman in their presence. Whereas on the other hand the witnesses produce on behalf of the workman stated that there was absolutely no such incident. The workman had taken the stand that he was being victimised due to his union activities but no such evidence was led by him. So much so this witness do not depose anything for the workman to be a union activist. The workman could not give even the name of his union when a question was put to him in cross-examination. The workman has denied to give any direction to Shri Chama Lal to give in writing Ex. MW.-2/4. Shri Chaman Lal Oberoi who conducted the case as representative of the workman did not appear in the witness box to deny the documents or explain the circumstances in which it was written to the management. This document speaks of a compromise between the concerned workman and Shri Raksh Paul. In the circumstances, I believe the version of the management about the assault and intimidation by the concerned workman. The action of the management in dismissing the concerned workman,—vide Ex. M-12 is according to the Certified Standing Orders Ex. MW-2/2. I, therefore, decide this issue in favour of the management.

Issue No. 3.—The workman is not entitled to any relief.

While answering the reference, I give my award that the termination of service of the workman was justified and in order. The workman is not entitled to any relief.

M.C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

Dated 20th June, 1981.

No. 596, Dated 23rd June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 9(1)-81-8Lab/7461.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Milton Cycle Industries Ltd., Sonapat.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 6 of 1980

between

THE WORKMEN AND THE MANAGEMENT OF M/S MILTON CYCLE
INDUSTRIES LIMITED, SONEPAT

AWARD

By order No. ID/SPT/2-II/79/1576, dated 10th January, 1980, the Governor of Haryana referred the following dispute between the management of M/s Milton Cycle Industries Limited, Sonapat and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

1. Whether the termination of services of the following workmen is justified and in order? If not, to what relief they are entitled?
 1. Shri Dharma Vir Panchal, son of Shri Ram Pat
 2. Shri Ram Naresh, son of Shri Devi Parshad
 3. Shri Sham Singh, son of Shri Munshi Ram
 4. Shri Rohtas Chander, son of Shri Kitab Singh
 5. Shri Chander Singh, son of Shri Bakhtawar
2. Whether the suspension of the following workmen is mala fide? If so, whether the suspension orders against them should be revoked by the management?
 1. Shri V.P. Singh, son of Shri Naresh Singh
 2. Shri Zile Singh, son of Shri Surja
 3. Shri Ram Narain, son of Shri Sher Singh
 4. Shri Jagpal Singh, son of Shri Randhir Singh

5. Shri Raja Ram, son of Shri Umrao Singh
6. Shri Kanhaiya Lal, son of Shri Amar Singh
3. Whether the workers who were placed under suspension prior to 24th October, 1979 are entitled to any subsistence allowance for the period of their suspension? If so, with what details?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 11th August, 1980:—

1. Whether the present dispute is espoused by substantial number of workmen? If not, to what effect?
2. Whether Rohtas Chander, Chander Singh, D.V. Panchal, Kanhaiya Lal, Zile Singh, Ram Narain, Raja Ram and Jag Pal Singh have not signed the statements of claim? If so, to what effect?
3. Whether the reference regarding the suspension (in reference issue No. 2) is bad in law? If not, to what effects?

4 to 6 As per reference order.

Issue No. 1 was treated as preliminary and the case was fixed for the evidence of the workmen, who examined Shri V.P. Singh General Secretary Milton Cycle Mazdoor Sangarsh Samiti as WW-1 and closed their case. Then the case was fixed for the evidence of the management who examined Shri H.K. Relhan, their Factory Manager as MW-1 and closed its case. Then the case was fixed for arguments. None from the workmen was present for addressing arguments even after adjournment. On the last date arguments of the management was heard *ex parte*. I now give my finding issues wise:—

Issue No. 1.—WW-I stated that he was a workman of the respondent management from 22nd January, 1969. He was suspended on 27th December, 1978. A demand notice assailing settlement, dated 30th December, 1977 was raised by the workmen. Copy of the demand notice was Ex. W-1. It was read over to 407 workers and they had appended their signatures and thumb impression. A complaint Ex. W-2 was given to the Joint Labour Commissioner. On 6th July, 1979 a meeting of the Sangarsh Samiti was held copy of proceeding was Ex. W-3. Another meeting was held on 30th June, 1979 copy of proceeding was Ex. W-4. Another meeting held on 30th August, 1979 copy of proceeding was Ex. W-4. Meetings were also held on 30th September, 1979 and 14th November, 1980 copy of resolution were Ex. W-5 and Ex. W-6. He had discussed the resolution of 14th November, 1980 with the workers who signed in token of their approval of that resolution. Signatures obtained were Ex. W-7. Union had taken time for discussion of the demand with the President of the management. Copies of letter from the management were Ex. W-8 and W-9. In cross examination he stated that there was no fixed time for the meeting but agenda was issued. He admitted that no agenda for meetings of 30th September, 1979 and 14th November, 1980 was placed on the notice board because there was no board at that time. It was displayed on the wall of the company. Shri D.V. Panchal was the President of the union. On 6th July, 1979 there were about 500 to 550 workmen in the factory. The workers referred in resolution number 5, dated 6th July, 1979 were not suspended at the one and the same time. They were suspended between 19th December, 1978 to 6th July, 1979. It was correct that there was no resolution in the proceeding book between the period 19th December, 1978 to 6th July, 1979 raising demands of the suspended workers. He denied the suggestion that no resolution was passed at the time of obtaining signatures copy Ex. W-7.

MW-1 stated that no demand notice was received by the management in respect of reference number 6, nor a copy of resolution was received. In cross examination he stated that it was wrong that the management had received demand notice dated 12th November, 1979 by post. He admitted Ex. W-8 to be letter of the management. He admitted that there was a union of Milton Cycle Sangarsh Smiti but he did not know if Shri V.P. Singh was its General Secretary.

I find that the present reference was forwarded to this Tribunal by notification dated 10th January, 1980. No demand notice was forwarded alongwith it. The claim statements were filed on behalf of the workmen individually. The management in the written statement raised a preliminary objection "that there is no espousal of any dispute by an appreciable number of workmen of the management factory and as such the present reference is illegal and bad in law and Hon'ble Tribunal has no jurisdiction to entertain the same." This plea was refuted in the rejoinder filed on behalf of the workmen. The matter under reference as given in Annexure A is on three counts :—

1. Whether the termination of services of the following workmen is justified and in order ? If not, to what relief they are entitled ?

Five names.

2. Whether the suspension of the following workmen is *mala fide* ? If so, whether the suspension orders against them should be revoked by the management ?

Six names.

3. Whether the workers who were placed under suspension prior to 24th October, 1979 are entitled to any subsistence allowance for the period of their suspension ? If so, with what details.

No names.

It is the workmen who invoke the jurisdiction of the Industrial Tribunal by making an application before the Government for reference. The onus is on them to prove that the Tribunal has got jurisdiction, therefore, the workmen led their evidence first and placed on file copies of resolutions dated 6th March, 1979 Ex. W-3, dated 30th August, 1979 Ex. W-4, dated 30th September, 1979 Ex. W-5 and dated 14th November, 1980 Ex. W-6. They also placed reliance on Ex. W-7 along with which 13 sheets are attached containing signatures of workmen numbering 269.

Reliance was placed by the management on 1968 I LLJ page 834 in which it is held as under :—

"A demand by the workmen must be made on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to management who rejects the same is not sufficient to constitute an Industrial Dispute".

And on 1965 I LLJ page 95 holding as under :—

The fact that substantial number of workmen were the members of the union was not sufficient in itself to convert the individual dispute into an industrial Dispute. It must further be shown that they acted together and arrived at an understanding by a resolution or by other means and

collectively by a resolution or by other means and collectively by a resolution or by other means and collectively supported on the date of reference, the demand or the cause of individual workmen".

I have gone through the photo copy of proceeding dated 6th July, 1979 Ex. W-3 and find that five resolutions were considered in a meeting attended by 100 members but none of the resolution speak of the present dispute. In the meeting held on 30th August, 1979 (Ex. W-4) four resolutions were discussed but there is no resolution about termination or suspension of the workmen under reference. As regards meeting dated 30th September, 1979 (Ex. W-5) it was attended by 143 members and by resolution number 1 it was decided to raise demand for bonus for 1978-79 whereas there is addition in the agenda that to put pressure upon the management to bring back to duty suspended workmen with back wages. There is no resolution for issuing a notice of demand giving names of persons or workers under reference in this document. In the meeting held on 14th November, 1980 Ex. W-6 there is a mention of raising of demand notice in respect of suspended workmen. Here also there are no names. As regards Ex. W-7. I find that in it are mentioned the pending industrial disputes. Presumably referred by WW-1 in his statement that the matter was placed before the workmen and their signatures were obtained on the pages appended with Ex. W-7. As regards the time of espousal it must be at the time of reference and post reference support is immaterial. It is held by the Supreme Court in Bombay, Union of Journalist and the Hindu Bombay that "support of the cause of the individual workman subsequent to the reference, held immaterial and irrelevant in determining the question as to whether individual dispute referred for adjudication assumed the character of industrial dispute on the date of reference. Therefore, resolutions if passed after the reference will not benefit the workmen. Matters under reference are admittedly individual matters and the cause must be espoused by a substantial number of their fellow workmen to make the same an industrial dispute which the workmen had failed to prove. Therefore, this issue is decided against the workmen.

Issue Nos. 2 to 6 :—An issue No. 1 has been decided against the workmen, therefore, these issues needs no decision.

While answering the reference I give my award that the case of the workmen fails on issue No. 1 and no further adjudication is necessary and the workmen are not entitled to any relief in this reference.

Dated the 25th June, 1981.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 621, dated the 27th June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.